

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Barbara Fawcett, individually and on behalf of all
others similarly situated,

Plaintiff,

V.

Citizens Bank, N.A.,

Defendant.

Case No.: 4:17-cv-11043-DHH

**DEFENDANT CITIZENS BANK, N.A.'S MOTION TO
DISMISS AND/OR STAY AND TO COMPEL ARBITRATION**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and/or the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, Defendant Citizens Bank, N.A. (“Citizens”) moves to compel Plaintiff to individually arbitrate her claim and dismiss or stay Plaintiff’s claim pending arbitration. Plaintiff entered into an Arbitration Agreement with Citizens in which she agreed to arbitrate any disputes with Citizens on an individual basis, and any questions regarding the enforceability or scope of that agreement must be resolved by the arbitrator. In the event that this Court does not compel the parties to arbitrate, Citizens moves to dismiss Plaintiff’s Complaint for failure to state a claim. Specifically, contrary to Plaintiff’s claim, both the Office of the Comptroller of the Currency and numerous federal courts have found that sustained overdraft fees are not interest under the National Bank Act, and so not subject to the National Bank Act’s usury provisions. The grounds for this motion are set forth in the accompanying memorandum of law.

REQUEST FOR ORAL ARGUMENT

Citizens respectfully requests oral argument on its Motion pursuant to this Court's Local Rule 7.1(d).

Dated: September 7, 2017

Respectfully Submitted,

CITIZENS BANK, N.A.,

By its attorneys,

/s/ Brenda R. Sharton

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LOCAL RULE 7.1(a)(2) CERTIFICATION

I, Brenda R. Sharton, hereby certify that pursuant to Local Rule 7.1(a)(2), counsel for Defendant Citizens Bank, N.A. conferred with counsel for the Plaintiff regarding the issues presented by this motion by telephone on September 6, 2017.

CERTIFICATE OF SERVICE

I further certify that I filed the foregoing through the ECF system on the 7th day of September, 2017, and that notice will be sent electronically to all counsel who are registered participants and paper copies will be sent to those indicated as non-registered participants.

/s/ Brenda R. Sharton

Brenda R. Sharton